

## SENATE BILL No. 289

### DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 22-2-13.

**Synopsis:** Family military employment leave. Provides that certain employees are entitled to up to 30 days leave from employment for family military leave when the spouse or a child of the employee is called to active duty in the armed forces of the United States or the national guard.

**Effective:** July 1, 2006.

**Simpson**

January 9, 2006, read first time and referred to Committee on Homeland Security, Utilities, and Public Policy.

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Introduced

Second Regular Session 114th General Assembly (2006)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2005 Regular Session of the General Assembly.

## SENATE BILL No. 289

A BILL FOR AN ACT to amend the Indiana Code concerning labor and safety.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 22-2-13 IS ADDED TO THE INDIANA CODE AS  
2       A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY  
3       1, 2006]:

4       **Chapter 13. Family Military Leave**

5       **Sec. 1.** As used in this chapter, "active duty" has the meaning  
6       set forth in IC 5-9-4-2.

7       **Sec. 2.** As used in this chapter, "armed forces of the United  
8       States" has the meaning set forth in IC 5-9-4-3.

9       **Sec. 3.** As used in this chapter, "employee" means an individual  
10      who:

11       (1) has been employed for at least twelve (12) months by an  
12       employer from whom family military leave is requested under  
13       this chapter; and

14       (2) worked at least one thousand two hundred fifty (1,250)  
15       hours for the employer described in subdivision (1) in the  
16       fifty-two (52) weeks immediately preceding the week that the  
17       individual begins a period of family military leave under this

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chapter.

Sec. 4. As used in this chapter, "employee benefits" means benefits, other than salary or wages, provided to or made available to an employee by an employer, including but not limited to group life insurance, health insurance, disability insurance, or a pension, or any combination of these benefits, regardless of whether benefits are provided by a policy or practice of the employer.

Sec. 5. As used in this chapter, "employer" means:

- (1) an individual;
- (2) a partnership;
- (3) an association;
- (4) a limited liability company;
- (5) a corporation;
- (6) a business trust;
- (7) the state; or
- (8) a municipal corporation (as defined in IC 36-1-2-10).

Sec. 6. As used in this chapter, "family military leave" means an absence from employment requested by an employee who is the spouse or parent of an individual called to active duty in the armed forces of the United States or the national guard for a period lasting more than thirty (30) days.

Sec. 7. As used in this chapter, "national guard" has the meaning set forth in IC 5-9-4-4.

Sec. 8. (a) An employer that employs:

- (1) at least fifteen (15) but not more than fifty (50) employees shall provide up to fifteen (15) days; and
- (2) more than fifty (50) employees shall provide up to thirty (30) days;

of family military leave to an employee who is the spouse or the parent of an individual called to active duty in the armed forces of the United States or the national guard during the time federal or state deployment orders are in effect.

(b) If the spouse or the child of the employee who has been granted family military leave has the term of active duty extended, the employee is entitled to another period of family military leave for each extension of the term of active duty.

Sec. 9. (a) If an employee intends to take five (5) or more consecutive work days of family military leave, the employee must give at least fourteen (14) days advance notice to the employee's employer of the following:

- (1) The date on which the employee intends to begin family military leave.

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(2) The expected duration of the family military leave.

(b) If the employee intends to take family military leave for less than five (5) consecutive work days, the employee shall give the employer as much advance notice as practicable.

Sec. 10. If an employee takes family military leave under this chapter, the employer may require the employee to provide certification from the proper military authority to verify the employee's eligibility for the family military leave requested. The employee shall provide the employer with the certification not later than ten (10) days after the employee returns to work.

Sec. 11. An employee is not entitled to family military leave as provided by this chapter unless the employee has exhausted all accrued:

- (1) vacation;
- (2) personal;
- (3) compensatory; and
- (4) other;

leave granted to the employee by the employer, except sick or disability leave.

Sec. 12. This chapter does not require that salary or wages be paid to an employee on family military leave unless the salary or wages are paid under any of the following:

- (1) An agreement between the employer and employee.
- (2) A labor contract between the employer and a representative of the employee.
- (3) A policy of the employer.

Sec. 13. This chapter does not prohibit an employee from taking leave granted under any of the following:

- (1) Another law.
- (2) A contractual agreement between the employee and employer or a representative of the employee and the employer.
- (3) A policy of the employer.

Sec. 14. (a) This section does not apply if an employer can prove that an employee was not restored to a position as provided in subsection (b) because of conditions unrelated to the employee's exercise of rights under this chapter.

(b) If an employee takes family military leave in compliance with this chapter and returns to work, the employee's employer shall immediately do one (1) of the following:

- (1) Return the employee to the position of employment that the employee had before the employee took the family

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military leave if the employer has not filled or eliminated the employee's previous position.

(2) Place the employee in another position of employment that provides compensation, employee benefits, working hours, working shifts, and other terms and conditions equivalent to the position of employment the employee had before the employee took the family military leave if the employer has filled the employee's previous position.

**Sec. 15. Except as provided in:**

- (1) an agreement, by collective bargaining or otherwise; or
- (2) an employer's policy;

an employee who is on family military leave is not entitled to compensation, additional seniority, or other benefits the employee would be entitled to receive if the employee were available for work.

**Sec. 16. (a)** During the time an employee is on family military leave, the employer shall continue to provide employee benefits to the employee at the employee's expense. The employer and employee may negotiate for the employer to maintain employee benefits at the employer's expense for the duration of the family military leave.

(b) Taking family military leave may not result in loss of an employee benefit accrued before the date the leave began.

(c) This chapter shall not be construed to affect or diminish the contract rights or seniority status of another employee of an employer covered under this chapter.

(d) The family military leave rights provided under this chapter may not be diminished by:

- (1) a collective bargaining agreement; or
- (2) an employee benefit plan.

**Sec. 17.** An employer and employee may agree to alternative employment conditions or terms during the time the employee is on family military leave. An agreement under this section does not limit an employee's right to family military leave.

**Sec. 18. (a)** An employer shall not:

- (1) interfere with;
- (2) restrain; or
- (3) deny;

the exercise of or the attempt to exercise a right provided under this chapter. The prohibitions in this section include discharging, fining, suspending, disciplining, or discriminating against an employee who takes family military leave.

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(b) An employer may:

- (1) discharge;
- (2) suspend; or
- (3) discipline;

an employee not entitled to family military leave for refusing to accommodate family military leave lawful under this chapter.

Sec. 19. (a) An employee who is denied family military leave may bring a civil action against an employer to enforce the rights of the employee under section 8 of this chapter.

(b) If an employer is found to have denied family military leave to an employee entitled to family military leave, the court may do the following:

(1) Award:

(A) actual damages; and

(B) court costs and reasonable attorney's fees;  
to the prevailing employee.

(2) Enjoin further violation of this chapter.

SECTION 2. [EFFECTIVE JULY 1, 2006] (a) IC 22-2-13, as added by this act, does not excuse noncompliance with a provision of a collective bargaining agreement or another employee benefit program or plan in effect on July 1, 2006, that is not in substantial conflict with IC 22-2-13, as added by this act. IC 22-2-13, as added by this act, does not justify an employer who reduces employee benefits provided by the employer that exceed the benefits required by IC 22-2-13, as added by this act.

(b) This SECTION expires July 1, 2007.

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